COPY

No. 266

Office-Supreme Court, U.S.
FILED
JUL 25 1960
JAMES R. BROWNING, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1960

UNITED STATES OF AMERICA, APPELLANT

v.

CENTRAL VERMONT RAILWAY, INC., ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

JURISDICTIONAL STATEMENT

J. LEE RANKIN,
Solicitor General,

ROBERT A. BICKS,
Assistant Attorney General,

RICHARD A. SOLOMON,
JOHN J. VOORTMAN,
Attorneys,
Department of Justice,
Washington 25, D. C.

INDEX

	Page
Opinions Below	1
Jurisdiction	2
Statute Involved	2
Question Presented	3
Statement	3
The Question Is Substantial	5
Conclusion	7

CITATIONS

Cases:

New York v. *United States*, 331 U.S. 284	6
Public Service Commission v. *United States*, 356 U.S. 421	2
St. Louis S. W. Ry. Co. v. *United States*, 245 U.S. 136	5, 6
Texas & Pacific Ry. Co. v. *United States*, 289 U.S. 627	5, 6
United States v. *Illinois Central Ry. Co.*, 263 U.S. 515	5
Virginian Ry. v. *United States*, 272 U.S. 658	6

Statute:

Interstate Commerce Act, 49 U.S.C. 1, *et seq.*	
Section 1(4)	4
Section 3(1)	2, 3
Section 15	6

In the Supreme Court of the United States

OCTOBER TERM, 1960

No. ——

UNITED STATES OF AMERICA, APPELLANT

v.

CENTRAL VERMONT RAILWAY, INC., ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the district court is reported at 182 F. Supp. 516, and is set out in Appendix A to the jurisdictional statement filed by the Interstate Commerce Commission. The judgment of the district court is set forth in Appendix B to that jurisdictional statement. The report of the Commission is reported at 303 I.C.C. 743. This report, the Commission Order of May 7, 1958, and its further order of March 11, 1959, are set forth, respectively, as

Appendices C, D and E to the Commission's jurisdictional statement.

JURISDICTION

This suit was brought under 28 U.S.C. 1336 to set aside and enjoin enforcement of an order of the Commission. The judgment of the district court was entered on March 7, 1960, a timely motion for reconsideration was denied on March 26, 1960, and the United States filed its notice of appeal in the district court on May 24, 1960. The jurisdiction of this Court to review the district court's judgment by direct appeal is conferred by 28 U.S.C. 1253 and 2101(b). *Public Service Commission* v. *United States*, 356 U.S. 421.

STATUTE INVOLVED

Section 3(1) of the Interstate Commerce Act (49 U.S.C. 3(1)) provides as follows:

> It shall be unlawful for any common carrier subject to the provisions of this chapter to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage

in any respect whatsoever: *Provided, however,* That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

QUESTION PRESENTED

Whether the district court erred in failing to sustain the Interstate Commerce Commission's determination that the actions of rail carriers in maintaining certain joint rates on traffic moving from Canadian origins to points in official territory, while maintaining combination rates at a higher level for like service from the same Canadian origins to points in southern territory, were unduly prejudicial to consignees in southern territory and unduly preferential to consignees in official territory, in violation of Section 3(1) of the Interstate Commerce Act.

STATEMENT

The primary source of asbestos processed in the United States is in southern Quebec. Asbestos is processed in North and South Carolina (southern territory) and at various points in so-called official territory.[1] The Canadian carriers serving the asbestos mines participate in joint rates with American carriers to the processing plants in official territory, but there are no joint rates to the plants in southern territory. The combination rates on shipments to southern territory (consisting of a "proportional" rate

[1] Official territory, broadly speaking, lies east of the Mississippi River and north of the Ohio and Potomac Rivers.

between the Canadian origins and the ports of entry, some three to five miles inside the United States, and domestic "class" and "commodity" rates from the ports of entry to the Carolina destinations) are substantially higher than the joint rates to the centers for the processing of asbestos in official territory.

Thermoid Company, a North Carolina processor of asbestos, filed a complaint with the Interstate Commerce Commission alleging that the combination rates (*a*) were unreasonable under Section 1(4) of the Interstate Commerce Act, 49 U.S.C. 1(4), and (*b*) subjected it to undue prejudice within the meaning of Section 3(1) of the Act in relation to processors in official territory who receive the benefits of joint rates. After full proceedings, the Commission, on May 7, 1958, issued a report (Appendix C to the jurisdictional statement of the I.C.C.) which found the rates to be both unreasonable and unduly prejudicial. It ordered the carriers to file tariffs for shipments of asbestos to complainants' plants which would not exceed the tariffs to official territory by more than a specified amount. On reconsideration, the Commission, on March 11, 1959, issued an order (Appendix E) clarifying the Commission's intent to leave to the option of the rail carriers the method of adjusting the rates so as to remove the discriminations found to violate Section 3 of the Act.

In proceedings instituted before a three-judge court, the district court held that the Commission had no authority to find the combination rates unreasonable because they included a foreign factor not subject to its jurisdiction. The court did not discuss the Commission's finding as to undue prejudice.

The issue as to undue prejudice was stressed in a motion for reconsideration. The court denied the motion without opinion on March 26, 1960.

THE QUESTION IS SUBSTANTIAL

The district court stated its view of the issue in this case as follows:

> A single question is presented to this court: Does the Commission have jurisdiction over the foreign factor of a combination international rate when the foreign factor is a proportional rate from the points of origin to a border interchange within the United States.

This question, which the district court resolved adversely to the Commission, may be relevant in judging the validity of the Commission's finding that the rates in issue were unreasonable. It is clearly not involved, however, in determining the propriety of the Commission's order to eliminate the unduly prejudicial relationship of the rates.

When carriers or groups of carriers enter into joint rates for the transportation of goods from a common originating point to certain destination points, but fail to provide joint rates to other destinations, to the prejudice of the latter, it is well settled that the Commission has authority under Section 3 of the Act to order such discrimination ended, even where the particular rates involved are not in themselves unreasonable. *Texas & Pacific Ry. Co.* v. *United States*, 289 U.S. 627; *St. Louis S. W. Ry. Co.* v. *United States*, 245 U.S. 136, 145; *United States* v. *Illinois Central Ry. Co.*, 263 U.S. 515, 520; *Virginian*

Ry. v. *United States*, 272 U.S. 658; *New York* v. *United States*, 331 U.S. 284, 342-344. Where, as here, the entry into joint rates depends upon the participation of a foreign (Canadian) carrier, the Commission may not be in a position to prescribe joint rates under Section 15 of the Act. But it has not purported to do so. Instead, as its Supplemental Order of March 11, 1959 (Appendix E) makes clear, the Commission gave the carriers operating in the United States—carriers whose active cooperation in the joint rates to official territory brings about the discrimination—the alternative of eliminating the prejudice by lowering the rates to southern territory or raising them to official territory. See *St. Louis S. W. Ry. Co.* v. *United States*, *supra*, 245 U.S. at 145; *Texas & Pacific Ry. Co.* v. *United States*, *supra*, 289 U.S. at 650.[2]

The problem is of substantial importance to the Commission's regulation of railroad rates in the interests of shippers and areas of this country. For, if the district court's decision stands, the right of shippers, communities, and entire regions to be free from discrimination and undue prejudice in transportation of all types of goods originating or

---

[2] It is notable that the predominant part of the through journey from the Canadian origins to the various American destinations takes place within the United States. The carriers operating in the United States are thus the principal participants in both rates (the joint rates to official territory and the combination rates to southern territory). Since these carriers are "the common source of the discrimination", an "order for correction of the disparity" may "run against * * * them." *Texas & Pacific Ry. Co.* case, *supra*, 289 U.S. at 650. And see *New York* v. *United States*, 331 U.S. 284, 340 *et seq.*

terminating in foreign countries will be beyond the reach of Commission control. This would be true even in situations, such as here, where the discrimination results from the voluntary participation of American carriers in joint rates giving preference to one area at the expense of other areas. Since the correction of this discrimination is not dependent upon the Commission's exercise of jurisdiction over the rates between the foreign origins and the ports of entry into the United States, the district court's opinion, which rests solely upon the proposition that the Commission lacks jurisdiction over such rates, does not support its judgment.

CONCLUSION

This appeal raises a significant question of law which is unquestionably important in its bearing upon the Commission's power to achieve an equitable railroad rate structure throughout the United States. It is respectfully submitted that probable jurisdiction should be noted.

J. LEE RANKIN,
Solicitor General.

ROBERT A. BICKS,
Assistant Attorney General.

RICHARD A. SOLOMON,
JOHN J. VOORTMAN,
Attorneys.

JULY, 1960

☆ U. S. GOVERNMENT PRINTING OFFICE, 1960 558092 61